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RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION

Written statement*/ submitted by the Asian Legal Resource Centre,
a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 December 2000]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

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Caste-based Discrimination in South Asia

1. Caste is an entrenched form of discrimination still practiced widely throughout South Asia. From an Indian progenitor, caste systems spread and perpetuated a form of human degradation with few parallels. In essence, caste discrimination limits one's employment to ancestral calling and prohibits inter-marriage, permanently and absolutely dividing social strata. In practice, discrimination is extended to all aspects of life; its physical and psychological effects on "untouchables" and "lower" castes constitute gross human rights abuse. Caste discrimination is absolute, as it nullifies social mobility. It is also a political ideology; a means of violently oppressive social control by which the largest sections of society are denied their basic rights to free speech, assembly and participation. It not merely denies equality but considers inequality ideal. Caste discrimination violates all human rights norms on which United Nations instruments are founded, as enshrined in the preamble to the Universal Declaration of Human Rights, that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world". Under the influence of caste, humane treatment of all people is impossible.

2. Though in many respects caste discrimination is worse than slavery and apartheid, the international community has not taken any significant position against it. The Commission is obliged to address caste via the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, just as previous international fora have addressed apartheid and slavery. For many millions suffering in South Asia, the Conference will be a failure if the caste system is not adequately held to account.

3. The Asian Legal Resource Centre appreciates the comments on caste made by the Special Rapporteur on Contemporary Forms of Racism in his January 1999 report (E/CN.4/1999/15); the recommendations on themes of the World Conference outlined in the Bellagio Consultation document (A/CONF.189/PC.1/10); and the recent written statement submitted by the World Council of Churches (E/CN.4/2000/NGO/102) on the current situation of Indian Dalits. The Asian Legal Resource Centre also welcomes the resolution on "Elimination of Racial Discrimination" at the 52nd session of the Sub-commission on the Promotion and Protection of Human Rights, held from 31 July to 18 August 2000, which declared that discrimination based on work and descent is prohibited by international human rights law. As caste discrimination is based on work and descent it is therefore prohibited by international human rights law.

4. Inhuman treatment of a vast South Asian population, including people in Sri Lanka, Nepal and Bangladesh, has been justified on the basis of caste. But by far the largest number of people suffering its extremes are in India. Presently, India's Dalits and other so-called "untouchables" constitute around 17% of the population. Along with other "minority" groups, including tribal peoples, Sikhs and Muslims, they constitute roughly 85% of Indians. To this day, the level of violence against Dalits and other lower castes is atrocious.

5. In 1936 the foremost Dalit leader, Dr. B.R. Ambedkar said, "My quarrel with Hindus and Hinduism is not over the imperfections of their social conduct. It is much more fundamental. It is over their ideals." Under the caste system, an ideal society is unequal. In every respect, caste rejects the notion of human equality and justifies discrimination on the basis of graded inequality. Principles of common good exist only within each caste group. The question of balancing interests between groups does not exist, for the simple reason that each caste is a world unto itself. Caste

prevents the possibility of associated living among people; it is the most extreme division of social and political power. Its enclosure is complete, to the extent that direct contact between castes is prohibited, in order to avoid "pollution". It means total segregation, whether in temples, at wells, on roads, in schools and in marriage. Thus, while caste discrimination bears some similarity to that of slavery, it is in many respects more dehumanizing. The very term "untouchable" means one with whom no social contact of any sort should be held, under threat of punishment. It degrades beyond all comparison.

6. In this century, some constitutional and legal provisions have been enacted in several countries to negate the influence of caste, however these legal measures have failed to significantly impact the caste structure and influence social dynamics. Some laws, such as those prohibiting atrocities against Dalits, have not been implemented. Claims that these legal provisions are evidence of the eradication of caste are untrue, as extreme forms of discrimination are perpetrated on hundreds of millions of people every day. The Constitution of India, for example, accepts the principles of equality, fraternity and liberty; it outlawed all enclosed units by implication. However between this legal position and reality lies a vast gap. Despite legal safe guards, official Indian figures show that caste crimes against 'untouchables' average over 10,000 a year; the world's largest democracy has failed to develop beyond a mere formal democracy. No amount of criticism about the conflict between constitutional principles and practice can be of any impact on ethical principles and practices based on the opposite ideal. Ethically, there is unity of theory and practice, as inequality is accepted both as ideal and is practiced. Legal confusions have no bearing on the ethical foundation of caste-based societies. Constitutional declarations of equality or acceptance of international covenants founded on the principle of equality may create legal obligations, nonetheless they do not change the ethical foundations of a given society.

7. Caste lies behind many social crises in South Asia. Caste society does not recognize the right to dissent as a valid ethical principle. The right to expression is based on recognition of human equality. To deny the right to dissent is to deny the right to freedom of expression, and further, to regard expression of opinion as futile activity. Caste boundaries are fixed; no change can be brought about by any expression of opinion.

8. Caste society has no absolute prohibition of torture. The caste system can be maintained only through indifference to cruelty. Cruel treatment of lower castes, such as in preventing them from drinking water out of the same wells as upper castes, is normalized. Under the rules of pollution and purification, those breaking with such unjust practices commit a wrong.

9. The lack of agreement on ethical principles against cruelty has a direct bearing on such practices as extra-judicial killings, disappearances, forced confessions and other human rights abuses. In South Asia these are now regarded as legally wrong, however morally they are not widely condemned. An underlying culture of impunity remains fundamentally unchallenged; there is little outrage.

10. The number of persons who to some degree have broken intellectually from the grip of caste has increased to millions. The consciousness of vast masses has begun to change. Modern pressures, such as increased interaction through travel and communications, make many practices of pollution and purification hard to maintain; open and conscious defiance more difficult to prevent. The conflict of inner rejection and outer compliance gives rise to many forms of hypocrisy and cynicism. Thus, willingness to accept equality as the ethical foundation of society has grown among many. In response, upper castes try to re-invent themselves in new forms, and develop

many more subtle ways to keep their system alive. Repression of those who reject caste is much more intense and violent. There are even movements working towards withdrawal of constitutional guarantees of equality and the various kinds of affirmative action provided to improve conditions for Dalits and lower castes.

11. However these days, when democratic jargon is widely used, sometimes there is no way that discrimination can be openly justified. That caste hierarchy is no longer easily legitimised has in itself contributed to the emergence of a broadly acceptable public discourse about caste status coded as cultural difference. Because people cannot readily speak of castes as unequal, they describe them as "different". In this case, difference is another name for inequality. Thus, when for the sake of international relations the proponents of caste enter into dialogue accepting equality as the basis of discussion, they engage in such discourse only artificially. Their real position remains outside the discourse.

12. Claims to a "special religiosity" are also often made internationally by the South Asian caste elite in defence of their system. Yet what have passed as religious views in India are often mundane theories and rules of social control that have been deemed sacred by controlling agents. When caste discrimination was developed, religious and judicial notions followed to justify it. To make this purported special religiosity "Indian", the views of Dalits and lower caste Indians were excluded, and have been since.

13. Elitist claims that Dalit concerns are merely historical matters of backwardness and society's functional bases are equally fabrications that aim to perpetuate their subjugation of lower castes. The Special Rapporteur recognised caste as falling within the scope of Racial Discrimination and Related Intolerance in his January 1999 report (para. 100) and cited articles from the Indian Constitution and views of the Committee on the Elimination of Racial Discrimination in reaching this conclusion. The Bellagio Consultation likewise recognised caste as a form of racial discrimination and intolerance. Thus caste is categorically a concern for the World Conference.

14. Yet in terms of what the international community must do to eradicate discrimination, caste presents a difficult problem. The caste system is one in which doors to other castes are closed. To open the doors cannot be a decision of just one caste. It has to be a decision by consensus, because the breaking of caste boundaries involves an exit as well an entrance. While one caste may make a decision to exit from its boundaries, entering into boundaries held by others requires their consent. When the most socially and politically powerful castes want to remain enclosed, lower castes' decisions to break open can have little effect. Emancipation lies in destroying caste enclosure from all sides. The international community must help to achieve this by examination and exposure of the ethical foundations underpinning caste-based societies.

15. The Asian Legal Resource Centre therefore urges the Commission to:

    a. Reaffirm Article 1 of the Universal Declaration of Human Rights, that all persons are born free and equal in dignity and rights, and deplore all principles and practices rejecting the basic notion of universal human equality;

    b. Recognise all forms of caste discrimination as falling with the scope of the Conference, and explicitly equate caste with slavery and apartheid;

c. Pursue the recommendations of the Bellagio Consultation, particularly for the formulation of national plans of action against racism, which in the South Asian context must include elimination of caste; establishment of a United Nations inter-agency task force on racism and a semi-autonomous body to promote research and training on related issues; with assistance from the High Commissioner for Human Rights, creation of operational units within regional bodies to focus on combatting racism, which pertains specifically to the South Asian Association for Regional Cooperation (SAARC); and the establishment of a United Nations voluntary trust fund to give a platform to Dalits and lower castes;

d. Examine in particular the issue of Dalit women and children, who suffer the most extreme forms of caste discrimination and have the fewest avenues available for social advancement; and,

e. Establish specific indicators to monitor measures for the advancement of not only civil and political rights but also social, economic and cultural rights, targetting the elimination of caste-based discrimination. The existence of mere legal provisions should not be taken as a guarantee of protection for victims of caste systems. All areas of administrative practice and implementation need to be regularly reviewed.

f. Implement a set of standards, norms and guidelines must be developed to abolish existing discriminatory practices based on work and descent under international human rights law. The states concerned must be held responsible under international law for these violations in these countries.

16. The elimination of caste is a much-belated human rights concern. After a few thousand years of practice, gigantic efforts to break the system open have as yet failed. That discrimination so gross as caste has survived to this day is not only an indictment against the countries where the practice exists but also against the international community itself. Fifty years of United Nations' instruments are of no significance to the millions continuing to suffer this most perverse form of intolerance. In South Asia, little regard will be paid to the outcome of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance if it does not effectively address caste. The solution to caste discrimination does not lie in tolerance among castes; it demands nothing less than the elimination of caste itself. The Commission must facilitate effective international action towards that end.